

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN MALONE,

Plaintiff,

No. CIV S-03-0363 FCD KJM P

vs.

CORRECTIONAL OFFICER  
MARTINEZ, \_\_\_\_\_

Defendant. \_\_\_\_\_/

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. On August 2, 2004, the court dismissed plaintiff's complaint with leave to file an amended complaint within thirty days.

On September 2, 2004, plaintiff filed a document requesting that the court order officials at his prison to provide plaintiff with his legal property so that he could file an amended complaint. Plaintiff's request will be denied as moot as plaintiff filed an amended complaint on October 20, 2004.

Plaintiff's amended complaint states a cognizable claim under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on a First Amendment denial of access to courts claim against defendant Martinez.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's September 2, 2004 "motion for cease and desist order" is denied.

3 2 Service is appropriate for defendant Martinez.

4 3. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,  
5 an instruction sheet and a copy of the amended complaint filed October 20, 2004.

6 4. Within thirty days from the date of this order, plaintiff shall complete the  
7 attached Notice of Submission of Documents and submit the following documents to the court:

8 a. The completed Notice of Submission of Documents;

9 b. One completed summons;

10 c. One completed USM-285 form; and

11 d. Two copies of the endorsed amended complaint filed October 20, 2004.

12 5. Plaintiff need not attempt service on defendant Martinez and need not request  
13 waiver of service. Upon receipt of the above-described documents, the court will direct the  
14 United States Marshal to serve defendant Martinez as required by Federal Rule of Civil  
15 Procedure 4 without payment of costs.

16 DATED: May 13, 2005.

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19 UNITED STATES MAGISTRATE JUDGE  
20  
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CORRECTIONAL OFFICER MARTINEZ,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

\_\_\_\_\_ /

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 form

\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff